

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-2925

In Regard to the Matter of:

Bayside State Prison

Litigation

JAIIME FIGUEROA,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * * *
MONDAY JUNE 16, 2008
* * * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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Transcript of proceedings in the above

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matter taken by Theresa O. Mastroianni, Certified

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Court Reporter, license number 30X100085700, and

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Notary Public of the State of New Jersey at the

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United States District Court House, One Gerry Plaza,

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Camden, New Jersey, 08102, commencing at 3:07 PM.

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1 JUDGE BISSELL: I'm reopening
2 proceedings for the purpose of rendering an opinion
3 in the case of Jaime Figueroa, civil number 08-2925.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Figueroa.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 MR. LINDSAY: Your Honor, before you
18 start, could I just get the docket number again on
19 that?

20 JUDGE BISSELL: Yes. 08-2925.

21 MR. LINDSAY: Thank you.

22 JUDGE BISSELL: Mr. Figueroa made a
23 very nice presentation and a very nice and
24 superficially credible presence in the course of his
25 testimony here. And I must say at the conclusion of

1 that testimony I was feeling perhaps something that
2 almost might border on outrage that this young man,
3 two or three days here in Bayside in a minimum
4 security area of the farm not more than an hour or
5 two in the place, should be subjected to a beating by
6 a SOG unit that just entered into the place and then
7 later on when seeking medical treatment, naive in
8 what those consequences might be, winds up being
9 called to the desk officer and then assaulted in a
10 bathroom by more SOG officers.

11 Then, of course, later on with the
12 apple incident, he gets it again. He's in the place
13 for three days and once again minimal security area
14 with no visible threat from the people down there to
15 anyone, and this happens.

16 And frankly, and if this provides some
17 guidance for some future cases, so be it, there is
18 something lurking in the back of my mind here from
19 the cases that I've heard about what's going on at
20 the farm that I find very troublesome. It's almost
21 as if the SOG units felt that if they ever wanted a
22 little recreation, they could go down to the farm and
23 work people over because nobody down there was going
24 to complain, they were in minimal custody facilities,
25 certainly where they wanted to stay, and many of them

1 on the verge of departure for parole, halfway house
2 or otherwise. So the whole thing with regard to Mr.
3 Figueroa had a superficial gloss to it, if you will,
4 of just kind of open season on the guys at the farm
5 because why are they going to complain. They've got
6 the most to lose if they complained and they'd be
7 involving themselves in the system and disciplinary
8 process if it turns out to be that, and so forth.

9 But, and it's a big but, when the
10 defense came back to present its evidence and indeed
11 through the logs that we received this morning as
12 P-2A and P-117, first, I found Lieutenant then
13 Sergeant Gale, (perhaps he was then even a
14 corrections officer, I'm not sure, he was a
15 corrections officer, I guess at that time,) also
16 credible. He presented a very good demeanor here in
17 this courtroom. And his recounting of the events in
18 connection with the apple incident was credible and
19 frankly not fatally inconsistent with Mr. Figueroa's
20 in one sense in that the throwing of the apple into
21 the fan that generated the problem came from a
22 different wing than that on which Mr. Figueroa was
23 being housed and that when the SOG unit arrived, they
24 were "standing by", and you can take that as you
25 wish, but in any event standing by assisting with the

1 count in the other wing, not the wing in which Mr.
2 Figueroa was housed.

3 Mr. Gale stated that he and his partner
4 took a full count in both wings and in an upstairs
5 location, but that the SOG officers logged in, and
6 I'll get to that shortly, and were not present in any
7 numbers on the wing where Mr. Figueroa was bunked.
8 Of course this was at nighttime. It was a night
9 shift.

10 And in the log book pertaining to that
11 evening, D-338A, it is, of course, noted that SOG did
12 come in on that occasion, August 12th/13th at 11:50
13 PM on August 12th, I believe, "SOG team in East Wing
14 per Captain Manascalco, East Wing lights to stay on
15 all night." I'm not sure if it's ever directly
16 established by testimony whether Mr. Figueroa was in
17 the East or the West Wing by name, but in any event,
18 coordinating his description with Mr. Gale's, the
19 heavier scrutiny, if you will, took place in the wing
20 from which the apple originated, which Mr. Figueroa
21 himself said was the other wing.

22 So it does not appear that there was a
23 significant SOG presence in the wing where Mr.
24 Figueroa was sleeping that night and I have no reason
25 to believe that Officer Gale would cover for SOG

1 beatings on that occasion on his watch. Just doesn't
2 seem like that sort of person.

3 Well, that leaves us, of course, with
4 the incident on or about the day of Mr. Figueroa's
5 arrival. And we checked the log for this barracks
6 for that date and there was no indication of a SOG
7 presence in those barracks.

8 The Exhibit P-2A from the SOG log was
9 introduced for the purpose of showing that the SOG
10 team was in the area. And I note a notation at 10:20
11 AM "Teams two, three and four dispatched to farm
12 Trailer Number 13." I think coordinated with P-117
13 it's clear that's the cottage, Cottage Number 13.
14 Right directly underneath that, "1A called for."
15 Internal Affairs. "10:40," subsequent entry on the
16 same event. Reading again from the log. "SOG team
17 two, three, four returned from farm with Inmate Wren
18 and Page in custody. They were taken to infirmary
19 and then lockup. No incidents. JA filmed."

20 When I first reviewed P-2A and P-117,
21 and recalled the testimony of Mr. Figueroa that he
22 and his fellow inmates were looking out the windows
23 of Barracks One, a thought occurred to me that maybe
24 the SOG officers either on their way to Cottage 13 or
25 on their way back from Cottage 13 decided they wanted

1 to discourage that type of observation and,
2 therefore, made a detour through Barracks One to just
3 let the people know there that they shouldn't get too
4 curious. However, once again, as we note from P-2A,
5 Internal Affairs was present and filming the events
6 involving the extraction from Cottage Number 13. And
7 that, by the way, is consistent with other evidence
8 we've had in the course of these cases that show from
9 time to time Internal Affairs filmed extractions.

10 Accordingly, with Internal Affairs on
11 the scene and doing their filming, the likelihood
12 that SOG would take a detour into Barracks Number One
13 where they hadn't even been called for duty is
14 virtually zero. And I add, of course, that they are
15 not logged in there. I realize it wasn't Officer
16 Gale's shift, it was in the daytime so we don't know
17 who the officer might have been and whether his
18 character would be subject to being compromised. But
19 under the circumstances and given Mr. Figueroa's
20 burden of proof, the contemporaneous documentary
21 evidence is strong enough to overcome his testimony
22 and any reasonable inferences therefrom that the
23 events, in fact, happened to him.

24 I am somewhat surprised to reach this
25 result because, in observing Mr. Figueroa, he didn't

1 exhibit the types of tendencies that over the years
2 we've come to associate with somebody who is making
3 up a story. But none of us is free from being
4 deceived and I find under these circumstances that,
5 for reasons perhaps only known to him, Mr. Figueroa
6 did make this up and what he says happened to him in
7 Barracks One on all three occasions didn't. And
8 contemporaneous documents plus the testimony of
9 Officer Gale established that to my satisfaction.

10 Furthermore, just to add, even if I had
11 not reached that ultimate conclusion and were dealing
12 with this matter solely on the question of the
13 requirement that Mr. Figueroa carry his burden of
14 proof, he has failed to do that.

15 Although not every item of evidence has
16 been discussed in this opinion/report, all evidence
17 presented to the Special Master was reviewed and
18 considered. For the reasons set forth above, I
19 recommend in this report that the district court
20 enter an order and judgment of no cause for action
21 with regard to Jaime Figueroa.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and
Certified Shorthand Reporter of the State of New
Jersey, do hereby certify that the foregoing is a
true and accurate transcript of the testimony as
taken stenographically by and before me at the time,
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a
relative nor employee nor attorney nor counsel of any
of the parties to this action, and that I am neither
a relative nor employee of such attorney or counsel,
and that I am not financially interested in the
action.

T. O. Mastroianni

Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. X10857

Date: June 17, 2008

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